

## **Notice of Proposed Action**

### **Title 10: Bureau of Real Estate Appraisers**

NOTICE IS HEREBY GIVEN that the Bureau of Real Estate Appraisers (“Bureau”) is proposing to take the action described in the informative digest below. Any interested person may present statements or arguments relevant to the action proposed, orally or in writing, at a hearing to be held at:

Department of Consumer Affairs  
1102 Q Street, Suite 4100  
Sacramento, CA 95811

Date: October 16, 2018  
Time: 10:00 a.m.

Written comments including those sent by mail, facsimile, or email to the address listed under “Contact Person” in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on October 15, 2018 or must be received by the Bureau at the hearing.

The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

**Authority and Reference:** Pursuant to the authority vested by Sections 11310, 11313, 11314, 11315, 11315.1, 11316, 11343, 11350, and 11361 of the Business and Professions Code and to implement, interpret and make specific Sections 10, 480, 490, 11302, 11310, 11315.5, 11320, 11321, 11360, 11361, 11345.2, 11345.3, 11345.4, 11345.45, 11345.6, of the Business and Professions Code and Civil Code section 1090.5, the Bureau is considering revising sections 3500, 3576, 3577, and 3721 to Title 10 of the California Code of Regulations as described in this Notice.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Senate Bill (SB) 547 (Hill, Chapter 429, Statutes of 2017, effective January 1, 2018) changed several provisions of Bureau law to comply with federal law and increase consumer protections. As a result of these changes, the Bureau proposes to amend its regulations to implement, interpret, or make specific the new statutory changes.

Specifically, section 3500 encompasses regulatory definitions. Some of these definitions were redefined or created with SB 547. The Bureau proposes to use the definitions in its regulatory language.

Section 3576 details the requirements for controlling persons of Appraisal Management Companies (AMC). The Bureau proposes to eliminate regulatory language that repeats statutory language as it is unnecessary. The Bureau also proposes to require AMCs report when their registration has been refused, denied, canceled, suspended, or revoked in any state.

Section 3577 contains several proposed changes including removing language already in statute, creating a minimum record retention period, clarifying examples of undue influence, prohibiting AMCs from altering appraisal reports, and revising how AMCs can remove appraisers from their panel.

The Bureau proposes to make a few minor edits to Section 3721 to ensure the grounds for discipline apply to AMCs.

Business and Professions Code sections 11310, 11313, 11314, 11315, 11315.1, 11316, 11343, 11350, and 11361 authorize the Bureau to adopt regulations to establish conditions for the registrations and operation of AMCs, as well as to enforce and administer the Bureau's law.

### **ANTICIPATED BENEFITS**

There are many benefits. First, the regulations will use the same defined terms as used in statute to sync the terms and make it easier to read and understand. Second, it will eliminate unnecessary language such as repetition of statutory language thereby reducing the size of the regulations. Third, it will require AMCs to report registration discipline in other states so the Bureau can determine if action should be brought here to protect Californians. Fourth, the proposal will establish a minimum record retention period for AMCs to ensure records are maintained when needed for investigations. Fifth, undue influence will be further defined to prevent its use against appraisers. Sixth, it will prohibit AMCs from altering reports thus ensuring the product is from the appraiser. Seventh, it will revise how AMCs can remove appraisers from their panel to allow AMCs to remove appraisers as needed.

### **CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS**

During the process of developing these regulations, the Bureau has conducted a search of any similar regulations on this topic and has determined that there is no reasonable interpretation of any state regulation that is inconsistent or incompatible with the proposed action.

## **FISCAL IMPACT ESTIMATES**

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Yes, absorbable cost for additional reporting requirement and possible enforcement if fail to report.

Nondiscretionary Costs/Savings to Local Agencies: None

Cost to, or mandate imposed on, any Local Agency or School District for Which Government Code Section 17500-17630 Require Reimbursement: None

Business Impact: The Bureau initially determines that the proposed regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed language will require AMCs keep records for five years. Clients already require these records be kept for at least five years so there will likely be no business impact on those AMCs.

Impact on Jobs/New Businesses: None of the proposed changes will impact jobs or the formation of new businesses.

Cost Impact on Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action other than the retention period discussed above.

Effect on Housing Costs: None

Effect on Small Businesses: The Bureau initially determines that the proposed regulation will not have a significant, statewide adverse economic impact directly affecting small businesses. The proposed language will require AMCs keep records for five years. Typically, these records are kept electronically for years anyways so there will likely be no business impact on those AMCs. For those who do not keep the records for the proposed five-year period, there will be a slight cost for maintaining those records for the five-year period.

## **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

Impact on Jobs/New Businesses: There will be no creation or elimination of jobs, businesses nor will it affect the expansion of existing businesses.

Benefits: There are many benefits. First, the regulations will use the same defined terms as used in statute to sync the terms and make it easier to read and understand. Second, it will eliminate unnecessary language such as repetition of statutory language thereby reducing the size of the regulations. Third, it will require AMCs to report registration discipline in other states so the Bureau can determine if action should be brought here to protect Californians. Fourth, the proposal will establish a minimum record retention period for AMCs to ensure records are maintained when needed for investigations. Fifth, undue influence will be further defined to

prevent its use against appraisers. Sixth, it will prohibit AMCs from altering reports thus ensuring the product is from the appraiser. Seventh, it will revise how AMCs can remove appraisers from their panel to allow AMCs to remove appraisers as needed.

Occupations/Businesses Impacted: Appraisal Management Companies.

Reporting Requirements: AMCs will need to report within 10 days of its registration being refused, denied, canceled, suspended, or revoked in any state.

Comparable Federal Regulations: None.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: AMCs will need to report to the Bureau when their registration has been refused, denied, canceled, suspended, or revoked in any state. This will benefit the health and welfare of Californians by ensuring only qualified AMCs are registered in California.

### **CONSIDERATION OF ALTERNATIVES**

The Bureau must determine that no reasonable alternative considered by the Bureau or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above mentioned hearing.

### **INITIAL STATEMENT OF REASONS AND INFORMATION**

The Bureau has prepared an initial statement of reasons which contains the purpose, rationale, and necessity for the proposed action.

The proposed text, this notice, the statement of reasons, and any other relevant documents are on the Bureau's website at [www.brea.ca.gov](http://www.brea.ca.gov). Click the "Laws & Enforcement" tab at the top of the page. Under the heading "Rulemaking Notifications" find the documents associated with this rulemaking subject: "AMC Update."

### **AVAILABILITY AND LOCATON OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. As of the date this notice is published in the Notice of Register, the rulemaking file consists of

this notice, the proposed text of the regulation and the initial statement of reasons. Copies may be obtained by contacting person named below or by accessing the website as provided above.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Bureau may adopt the proposed regulation substantially, as described in this notice. If the Bureau makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Bureau adopts the regulations as revised. Please send requests for copies of any modified regulation to the attention of the contact person named below. the Bureau will accept written comments on the modified regulation for 15 days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the person named below.

### **CONTACT PERSON**

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Kyle Muteff, Legal Counsel  
1102 Q Street, Suite 4100  
Phone: 916-341-6126  
FAX: 916-440-7406  
[kyle.muteff@brea.ca.gov](mailto:kyle.muteff@brea.ca.gov)

The backup person is:  
Thu Tran  
1102 Q Street, Suite 4100  
Phone: 916-440-7876  
FAX: 916-440-7406  
[Thu.Tran@brea.ca.gov](mailto:Thu.Tran@brea.ca.gov)

Proposed Text  
California Code of Regulations  
Title 10, Chapter 6.5, Articles 1, 4, and 12

The text below represents existing language modified to show proposed changes. Proposed deletions are in ~~striketrough~~. Proposed additions are in underline.

**§ 3500 Meaning of Words and General Definitions**

(a) Words shall have their usual meaning unless the context or a definition clearly indicates a different meaning. Words used in their present tense include the future tense and words in the singular form include the plural form. Use of the word “shall” or “must” denotes mandatory conduct; “may” denotes permissive conduct; and “should” denotes recommended conduct.

(b) As used in these regulations, the following words and phrases shall have the following definitions:

(1) “Applicant” means a natural person who has made application to be a State Licensed Real Estate Appraiser, a State Certified Real Estate Appraiser, a Course Provider or a person who has applied for a Trainee License, a Reciprocal License or a Temporary Practice Permit. Applicant also means an entity or Controlling Person that has applied for a Certificate of Registration as an Appraisal Management Company;

(2)(A) “Appraisal management company” means any person or entity as defined in Business and Professions Code section 11302.~~means any person or entity that satisfies all of the following conditions:~~

- ~~1. Maintains an approved list or lists, containing 11 or more independent contractor appraisers licensed or certified pursuant to Part 3 (commencing with section 11300), of Division 4 of the Business and Professions Code or employs 11 or more appraisers licensed or certified pursuant to that Part.~~
- ~~2. Receives requests for appraisals from one or more clients.~~
- ~~3. For a fee paid by one or more of its clients, delegates appraisal assignments for completion by its independent contractor or employee appraisers.~~

(B) ~~“Appraisal Management Company” does not include any of the following, when that person or entity directly contracts with an independent appraiser:~~

- ~~1. Any bank, credit union, trust company, savings and loan association, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.~~

~~2. Any finance lender or finance broker licensed pursuant to Division 9 (commencing with Section 22000) of the Financial Code, when acting under the authority of that license.~~

~~3. Any residential mortgage lender or residential mortgage servicer licensed pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.~~

~~4. Any real estate broker licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, when acting under the authority of that license.~~

~~(C) "Appraisal Management Company" does not include any person licensed to practice law in this state who is working with or on behalf of a client of that person in connection with one or more appraisals for that client;~~

(3) "Appraisal management services" as defined in Business and Professions Code section 11302.

~~(43)~~ "Appraisal Standards Board (ASB)" means the board of The Appraisal Foundation;

~~(54)~~ "Appraisal Subcommittee (ASC)" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council;

~~(65)~~ "Appraiser" means an individual who holds a license issued by the Bureau of Real Estate Appraisers;

~~(76)~~ "Appraiser Qualifications Board (AQB)" means the subcommittee of The Appraisal Foundation. The "Appraiser Qualifications Board" (AQB) is the board of The Appraisal Foundation which promulgates the minimum national requirements for licensure for licensed appraisers. The minimum national requirements includes the interpretations and clarification's of the appraiser qualifications criteria issued by AQB;

~~(87)~~ "Certificate of Registration" means a certificate issued by the California Bureau of Real Estate Appraisers verifying the registration of a person or entity as approved to conduct business in California as an Appraisal Management Company.

~~(98)~~ "Controlling Person" means one of more of the following:

(A) An officer or director of an Appraisal Management Company, or an individual that holds 10% or greater ownership interest in an Appraisal Management Company.

(B) An individual employed, appointed or authorized by an Appraisal Management Company that has the authority to enter into a contractual

relationship with clients for the performance of appraisal services and that has the authority to enter into agreements with independent appraisers for the completion of appraisals.

(C) An individual who possesses the power to direct or cause the direction of the management or policies of an Appraisal Management Company.

(109) “Course Provider” means a person or organization that has been approved by the Bureau of Real Estate Appraisers to provide educational courses within the parameters set forth herein.

(1140) “Designated Officer” means a Controlling Person authorized by the governing structure of the Appraisal Management Company to act on behalf of the company for purposes of application for, and compliance with, a Certificate of Registration to operate as an Appraisal Management Company pursuant to California law. The Designated Officer shall be responsible for the supervision and control of activities conducted on behalf of the Appraisal Management Company by its officers and employees as necessary to secure full compliance with the Real Estate Appraisers’ Licensing and Certification Law and these regulations as related to Appraisal Management Companies. ~~provisions of SB 237 (Chapter 173, Statutes of 2009), including contract services provided to the Appraisal Management Company for the performance of appraisal activities for which a California Real Estate Appraisal license is required.~~

(1244) “Chief” means the Chief of BREa or his or her designee;

(1342) “FIRREA” means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73 and any amendments thereto;

(1443) “Non-residential property” means all other property except one to four unit residential structures and land suitable for one to four unit residential use;

(1544) “Bureau” means the Bureau of Real Estate Appraisers, and/or the Chief;

(1645) “BREa” means the Bureau of Real Estate Appraisers;

(1746) “Registrant” means a person or entity authorized to conduct business as an Appraisal Management Company in California through issuance of a Certificate of Registration by the California Bureau of Real Estate Appraisers.

(1847) “Registration” means the procedures and requirements with which a person or entity shall comply in order to qualify to conduct business as an Appraisal Management Company;



(1948) “Residential property” means real property containing, and land suitable for, four or fewer residential units.

(2049) “Uniform Standards of Professional Appraisal Practice; (USPAP)” means those standards as adopted by the Appraisal Standards Board of the Appraisal Foundation.

Note: Authority cited: Sections 11310, 11313, 11314, 11316, 11350 and 11361, Business and Professions Code. Reference: Sections 10, 11302, 11310, 11360 and 11361, Business and Professions Code.

### **§ 3576. Background Requirements for Controlling Persons in Appraisal Management Companies.**

~~(a) No individual can act as a Controlling Person of an Appraisal Management Company who has entered a plea of guilty or no contest to, or been convicted of, a felony.~~

~~(ab)~~ No individual can act as a Controlling Person of an Appraisal Management Company who has had a license or certificate to act as an appraiser, or to engage in any activities related to real estate lending or the transfer of real property refused, denied, canceled, or revoked in California or any other state.

~~(be)~~ A Controlling Person of an Appraisal Management Company that holds a Certificate of Registration who has entered a plea of guilty or no contest to, or been convicted of, a felony, or who has had a real estate appraiser's license or real estate sale's license revoked, surrendered, or denied in California or any other state must report this occurrence to the Bureau within 10 days of the date he or she has knowledge of that fact.

~~(cd)~~ Any Controlling Person applicant who is licensed or certified as a real estate appraiser in any other jurisdiction must have a license in good standing in that jurisdiction and provide the Bureau with a certificate of license history.

~~(de)~~ Any Controlling Person applicant who is not licensed or certified by the Bureau must submit fingerprint images to be used by the Department of Justice for the purpose of obtaining information relating to the existence or content of state and federal records of arrests or convictions.

~~(ef)~~ An Appraisal Management Company must disclose the name of the Designated Officer of the Appraisal Management Company.

(f) An Appraisal Management Company shall notify the Bureau in writing within 10 days of its registration being refused, denied, canceled, suspended, or revoked in any state.

Note: Authority cited: Sections 11314 and 11343, Business and Professions Code. Reference: Sections 11302 and 11345.2 Business and Professions Code.

**§ 3577. Minimum Standards of Practice for Appraisal Management Companies.**

All Appraisal Management Companies must ensure that they adhere to the following business practices when performing appraisal management services for properties located within the State of California:

~~(a) Appraisal Management Companies will delegate appraisal assignments for completion only to independent contractor or employee appraisers that possess the licenses and certificates required by the Bureau.~~

(~~a~~b) Appraisal Management Companies must adopt reasonable procedures designed to ensure that all appraisal assignments completed by its independent contractor or employee appraisers are performed in accordance with the Uniform Standards of Professional Appraisal Practice.

(~~b~~e) Appraisal Management Companies must maintain records of each of the following for each service request for at least five years:

- (1) Date of the receipt of the request;
- (2) The name of the person from whom the request was received;
- (3) The name of the client for whom the request was made, if different from the name of the person from whom the request was received;
- (4) The name of the appraiser or appraisers assigned to perform the contracted service;  
and
- (5) The date of delivery of the appraisal product to the client;
- (6) Client contract;
- (7) Engagement letter; and
- (8) The appraisal report.

(~~c~~d) Appraisal Management Companies must maintain records of all appraisal fees dispersed to contracted appraisers and the final fee charged to the lender/client for at least five years.

(~~d~~e) An Appraisal Management Company cannot prohibit a contracted appraiser/client from disclosing the fee paid to the appraiser/client for an appraisal assignment in the body of the appraisal report.

(~~e~~f)(1) No Appraisal Management Company shall improperly influence or attempt to improperly influence the development, reporting, result, or review of an appraisal report or review by engaging in coercion, extortion, inducement, collusion, bribery, intimidation, compensation, or instruction. In addition to the acts set forth in Business and Professions Code section 11345.4,

prohibited acts include, but are not limited to, the following: ~~without limitation, any of the following actions:~~

(1A) Withholding or threatening to withhold the timely payment for a contracted appraisal assignment that is completed in accordance with the Uniform Standards of Professional Appraisal Practice and with contractual provisions as agreed to by the Appraisal Management Company and the appraisal contractor;

(2B) Withholding or threatening to withhold future business with an appraisal contractor solely based on an appraisal result;

(3C) Basing the appraisal fee for an appraisal assignment on a pre-determined value;

~~(4D) Attempting to influence the development of an appraisal assignment through coercion, extortion or bribery~~ Providing an appraiser with an anticipated, estimated, encouraged, or desired valuation before or after the completion of the appraisal report;

(5E) Expressly or impliedly promising future business, promotions, or increased compensation for a contracted appraiser based on certain business practices not in compliance with the Uniform Standards of Professional Appraisal Practice.;

~~(2) Subdivision (f)(1) of this Section does not prohibit an Appraisal Management Company or an individual with an interest in a real estate transaction from requesting an appraiser to:~~

~~(A) Consider additional appropriate property information including relevant sales comparables not considered in the initial appraisal report;~~

~~(B) Provide further detail, substantiation or explanation of the appraiser's conclusion of value; or~~

~~(C) Correct errors in the appraisal report.~~

(fg) The Appraisal Management Company shall not base the payment of an appraisal fee on a mortgage-related event occurring subsequent to completion of the appraisal, i.e. close of escrow.

(gh) The appraiser shall not be required to provide the Appraisal Management Company with the appraiser's digital signature.

(hi) The Appraisal Management Company shall not alter, amend, or change an appraisal report submitted by a licensed or certified appraiser by removing the appraiser's signature or seal or by adding information to or removing information from the appraisal report. ~~with an intent to change the value conclusion.~~

(ij) The Appraisal Management Company shall not remove an independent appraiser from their panel of approved appraisers without prior written notice. The notice shall state the reason(s) for

~~the appraiser's removal, that includes evidence which supports the basis of fact that the appraiser has violated the Uniform Standards of Professional Appraisal Practice or other applicable appraisal regulations or state statutes, or evidence which demonstrates substandard performance, improper or unprofessional behavior, or other substantive deficiencies.~~

~~(k) An Appraisal Management Company shall notify the Bureau within 10 business days of any change to or addition of a Controlling Person of the company.~~

Note: Authority cited: Sections 11313 and 11314, Business and Professions Code. Reference: Sections 11345.3, 11345.4, 11345.45 and 11345.6, Business and Professions Code; and Section 1090.5, Civil Code.

### **§ 3721. Revocation, Suspension, Denial of Licenses or Certificate of Registration.**

(a) The Chief may issue a citation, order of abatement, assess a fine or private or public reproof, suspend or revoke any license or Certificate of Registration, and/or may deny the issuance or renewal of a license or Certificate of Registration of any person or entity acting in a capacity requiring a license or Certificate of Registration who has:

- (1) Been convicted of a felony or any crime which is substantially related to the qualifications, functions, or duties of the profession of real estate appraisal;
- (2) Done any act involving dishonesty, fraud or deceit with the intent to benefit himself or another, or to injure another;
- (3) Been convicted for a commission or solicitation of a criminal act which involved or threatened bodily harm to others;
- (4) Done any act which if done by the holder of a license to practice real estate appraisal would be grounds for revocation or suspension of such license;
- (5) Knowingly made a false statement of material fact required to be disclosed in an application for a license authorizing the practice of real estate appraisal or Certificate of Registration;
- (6) Violated any provision of USPAP;
- (7) Violated any provision of the Real Estate Appraisers' Licensing and Certification Law, Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code, or regulations promulgated pursuant thereto; or any provision of the Business and Professions Code applicable to applicants for or holders of licenses or Certificate of Registration authorizing appraisals;

(8) Been prohibited from participating in the affairs of an insured depository institution pursuant to Section 19(a) of the Federal Deposit Insurance Act (12 U.S.C. Section 1829.); or

(9) Submitted a financial instrument to BREa for the payment of any fee, fine or penalty which instrument is subsequently dishonored by the issuing institution due to an act or omission of that person.

(b) Before issuing any private or public reproof or denying, suspending, or revoking any license or Certificate of Registration issued or issuable under the provisions of the Real Estate Appraisers Licensing and Certification Law or these regulations, the Bureau shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code (the Administrative Procedure Act) and the Bureau shall have all the powers granted therein.

(c) Any person or entity issued a citation containing a fine or order of abatement may contest the citation by filing a written notice with the Bureau within 30 calendar days that states with specificity the basis of the appeal. Upon receipt of such notice, the Bureau shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code (the Administrative Procedure Act) and the Bureau shall have all the powers granted therein.

Note: Authority cited: Sections 11313, 11314, 11315 and 11315.1, Business and Professions Code. Reference: Sections 480, 490, 11315.5, 11320 and 11321, Business and Professions Code; Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.